

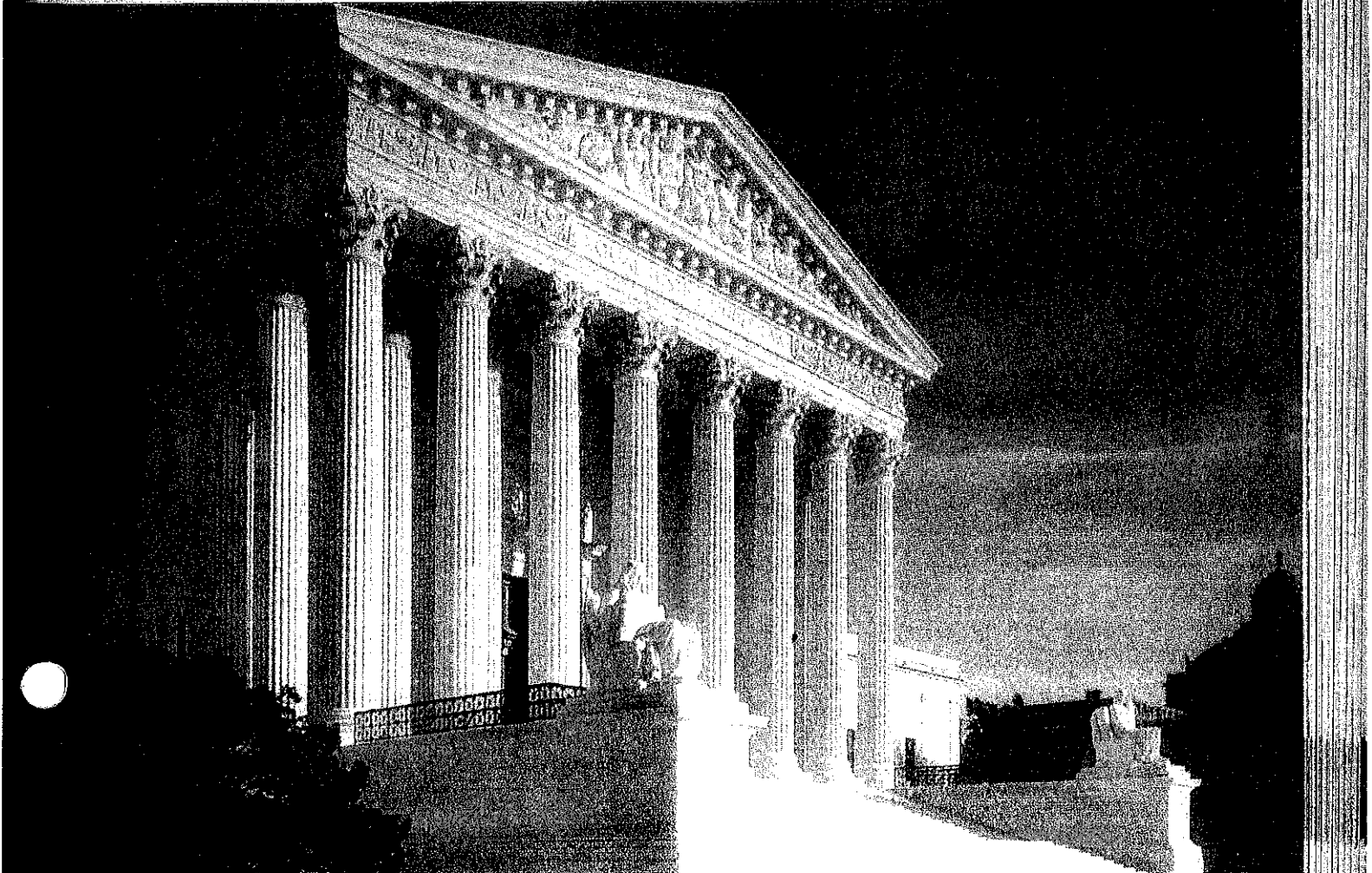
# How does the U.S. Supreme Court determine the meaning of the words in the Constitution?

## LESSON PURPOSE

Some parts of the Constitution are clear and easy to understand. Other parts are much more difficult. What is the best way to decide what the Constitution means? In this lesson, you will learn about some of the more common approaches the U.S. Supreme Court has used to decide what the Constitution means.

When you finish this lesson, you should be able to describe these approaches. You should also be able to give the arguments in favor of or against each of these methods.

# 22



## TERMS TO UNDERSTAND



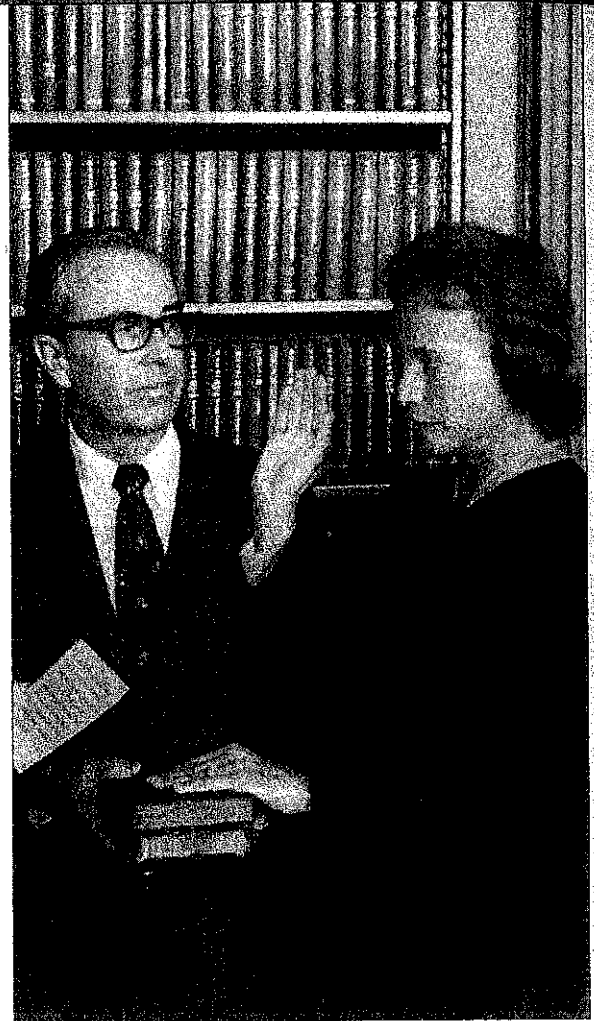
### Interpret Second Amendment

## Why is it difficult to understand the meaning of some parts of the Constitution?

Deciding what the Constitution means has been a continuous process throughout our history. Even the justices of the Supreme Court sometimes disagree about the best method of deciding what the Constitution means.

Some parts are easy to understand. For example, Article II says, "The executive Power shall be vested in a President of the United States of America." This is a very specific statement about the head of the executive branch. Not all parts of the Constitution are so clear. For example, the meaning of the following statements in the Constitution is not specific:

- Congress shall have the power to make laws that are "necessary and proper" to carry out its responsibilities.
- Citizens are protected against "unreasonable searches and seizures."
- No state shall "deprive any person of life, liberty, or property without due process of law."



*Sandra Day O'Connor, the first woman U.S. Supreme Court Justice. She was appointed in 1988. Who has the power to appoint Supreme Court justices? Why do you think it took so long for a woman to be appointed?*

## What difficulties are there in deciding the meaning of the words in the Constitution?

Work with a partner. Read the following example of language found in the Constitution.

**EXAMPLE**

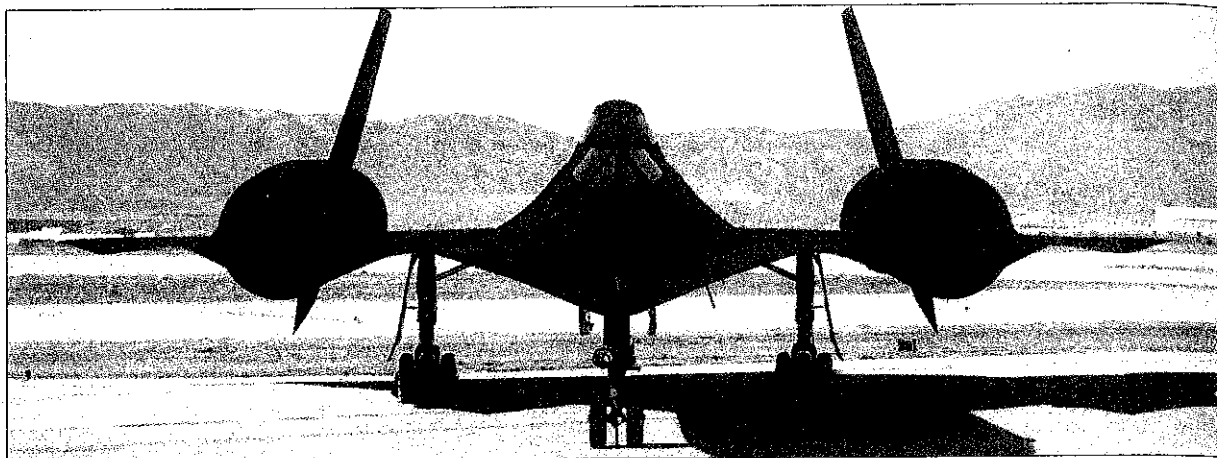
**The Fourth Amendment protects citizens against "unreasonable searches and seizures."**

If you were a member of the U.S. Supreme Court, how would you decide what makes a search or seizure unreasonable?

Read the methods given below. Pick out the advantages and disadvantages of each method presented. Then, determine which method might be best for deciding the meaning of the Constitution. Be prepared to explain your opinion to the class.

- ❶ Would you look up "unreasonable" in a dictionary to find out what it means?
- ❷ Would you try to find out how the Framers might have explained the word "unreasonable"?
- ❸ Would you examine the word "unreasonable" in relation to such basic ideas as natural rights and limited government?
- ❹ Would you examine the word "unreasonable" in relation to the historical, political, and social changes that have occurred since the Constitution was written?
- ❺ Would you rely upon previous Court rulings on "unreasonable" searches and seizures?





*The Constitution only grants Congress the authority to establish an army and a navy. What argument can you make that the Constitution also grants Congress the authority to establish an air force?*

## How does the U.S. Supreme Court decide what the words in the Constitution mean?

When deciding constitutional cases, the justices of the U.S. Supreme Court have to interpret the Constitution. To interpret means to decide what the words or phrases actually mean. There are four basic methods that the U.S. Supreme Court has used to interpret the Constitution. Each method has its advantages and disadvantages.

- ① **The plain meaning of the words in the Constitution**  
Using this method, the justices consider the literal, or plain, meanings of the words. Sometimes they study what the words meant at the time they were written.

With this method the Court bases its decisions, as closely as possible, on how the Framers meant the Constitution to be interpreted. If the meaning of the words is clear, then this is the best way to know what the Framers meant.

The problem is that at the Philadelphia Convention there was disagreement about the meaning of some words. Another problem is that some questions are not answered at all. For example, the Constitution gives Congress the power to establish an army and a navy. Does this mean that Congress does not have the power to establish an air force?

- ② **The intention of the Framers**  
This method is based on the idea that the Constitution by itself does not always have an obvious meaning. Therefore, we should look at the intentions of the people who wrote it. Those who believe in this method say that the justices should base their decisions on how the Framers would have decided. They claim that it is the approach most faithful to the ideas in the Constitution.

The problem is that it is extremely difficult, if not impossible, to figure out what the Framers intended on some issues. There were differences of opinion among the thirty-nine Framers. How can you determine who had the correct



view? This method of interpretation also gives no guidelines about types of situations that did not exist when the Constitution was written.

❷ **The Constitution is based on some fundamental principles of government**

These principles include the natural rights philosophy, constitutionalism, and republican government. As the nation matures so does our understanding of these basic principles. This method says that the justices should make their decisions based on these basic principles and values.

❸ **Today's social values and needs**

This method says that the justices should use today's social values in interpreting the Constitution. People who hold this view believe that the justices should not ignore the realities of our society today. Justices, they argue, should not hold back social progress by sticking to outmoded interpretations.

People opposed to methods 3 and 4 say that these approaches give the justices too much freedom to decide cases according to their own political ideas and personal beliefs. The justices can simply alter the Constitution as they please.

In deciding a case, U.S. Supreme Court justices are influenced by a number of things. They consider the literal meaning of the words in the Constitution as well as the intention of the Framers. Justices consider the basic principles of the Constitution as well as the previous decisions of the Court. The justices are also aware of the current political, social, and economic situation in the country. Finally, the justices are influenced, as is everyone, by their own personal beliefs.

The U.S. Supreme Court's decisions often raise much controversy—especially when the Court has attempted to define and protect certain basic rights. In the next unit, we will look at some of these controversies.



*What are arguments for and against using today's social values and needs to interpret the Constitution?*

## How would you interpret what the words in the Second Amendment mean?

Senator Orrin Hatch has written: "When our ancestors forged a land 'conceived in liberty,' they did so with musket and rifle...as a nation of armed freemen...[and] they devoted one full amendment out of ten to nothing but the protection of their right to keep and bear arms against governmental interference."

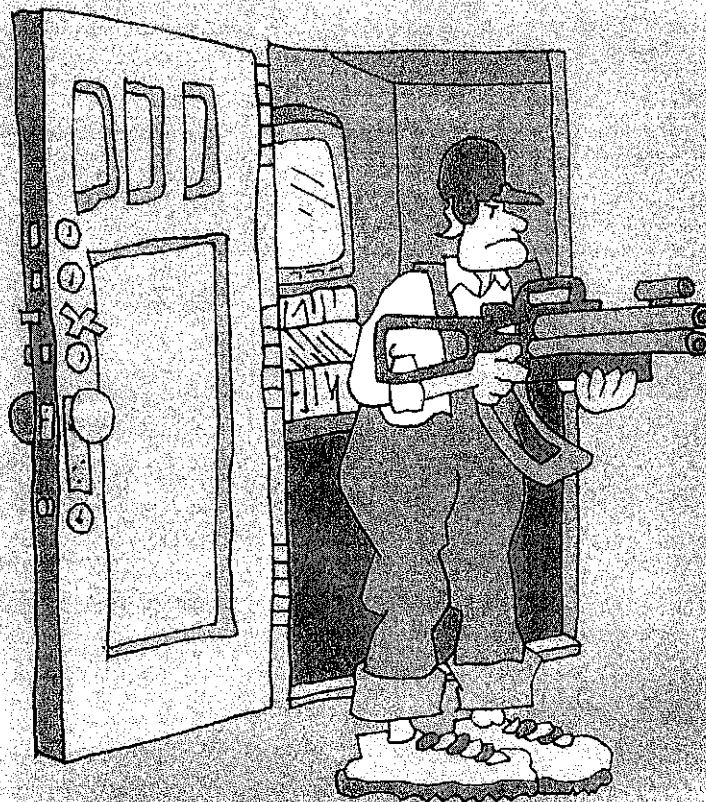
Using library and Internet resources, work in small groups to answer the following questions. Share your answers with the class.

- ❶ In 1791, when the Second Amendment was passed, why did the nation seek to protect liberty by protecting the right to keep and bear arms? What historical background and circumstances led them to this conclusion?
- ❷ Do you think the Second Amendment is as important today as it was in the eighteenth century? Explain your answer.



③ In a 1998 U.S. Supreme Court case, Justice Ruth Bader Ginsburg pointed out that the text of the **Second Amendment** refers to the right to keep *and bear* arms. Since to *bear* arms means to carry them—not just to possess them—should citizens in every state be allowed to carry firearms on their person? Should they be able to keep them in vehicles? Why or why not?

④ At present, no one can possess certain kinds of firearms such as fully automatic assault weapons. What limitations, if any, do you think should be placed upon the right to bear arms? How would you justify your position?



## LESSON REVIEW

- ① Why is it sometimes difficult to determine the meaning of the words in the Constitution?
- ② What does it mean "to interpret" the Constitution?
- ③ What are the four methods that justices might use to interpret the Constitution? What are the advantages and disadvantages of each method?

## ACTIVITIES

- ① Imagine that you are a member of the United States Supreme Court. The Court has agreed to hear a case involving government agencies watching which sites citizens visit on the Internet. This technology did not exist when the Constitution was written. What method for interpreting the Constitution might you use to determine whether the practice is unconstitutional? Explain your reasons.
- ② Examine the following two statements by former justices of the U.S. Supreme Court. What does each statement mean? Do you agree with these statements? Why or why not?

*"We are under a Constitution, but the Constitution is what the judges say it is."*

Charles Evans Hughes  
Chief Justice of the United States,  
1930–1941  
Associate Justice of the U.S.  
Supreme Court, 1910–1916

*"As a member of this court I am not justified in writing my opinions into the Constitution, no matter how deeply I may cherish them."*

Felix Frankfurter  
Associate Justice of the U.S.  
Supreme Court, 1939–1962